

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF MOUNTAINEER CELLULAR )  
LIMITED LIABILITY COMPANY FOR THE ISSUANCE OF ) CASE NO. 99-064  
A CERTIFICATE OF PUBLIC CONVENIENCE AND )  
NECESSITY TO CONSTRUCT A TOWER )

O R D E R

On March 4, 1999, Mountaineer Cellular General Partnership ("Mountaineer Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a cellular radio telecommunications system for Rural Service Area No. 10 ("RSA No. 10"). RSA No. 10 includes Breathitt, Estill, Jackson, Knott, Lee, Letcher, Owsley, Perry, Powell, and Wolfe counties. Mountaineer Cellular has requested authorization to construct a cell site in Jackson County. Mountaineer Cellular was previously granted authority to operate a cellular radio telecommunications system in RSA No. 10 in Case No. 91-002.<sup>1</sup>

The proposed cell site consists of a 180-foot or less self-supporting antenna tower to be located 1.7 miles northwest of the intersection of US Highway 421 and Kentucky Highway 2004 in Jackson County, Kentucky ("the Sandgap cell site"). The coordinates for the Sandgap cell site are North Latitude 37° 30' 13" by West Longitude 84° 06' 48".

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<sup>1</sup> Case No. 91-002, The Application of Mountaineer Cellular General Partnership for the Issuance of Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public and for Establishment of Initial Rates.

Mountaineer Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Sandgap cell site. Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and a Registered Professional Engineer has certified the plans.

Because the affected area is not within the jurisdiction of a Planning Commission, pursuant to 807 KAR 5:063, Section 1, Mountaineer Cellular notified the Jackson County Judge/Executive of the pending construction. Mountaineer Cellular has filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") seeking approval for the construction and operation of the Sandgap cell site. Both applications are pending.

Mountaineer Cellular has filed notices verifying that each person who owns property within 500 feet of the Sandgap cell site has been notified of the pending construction. The notice solicited any comments and informed the property owners of their right to request intervention. In addition, notice was published in the *Jackson County Sun* and posted in a visible location on the proposed site, as well as on the nearest public road, for at least two weeks after Mountaineer Cellular's application was filed. To date, no intervention requests have been received.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, Mountaineer Cellular

should notify the Commission if it does not use this antenna tower to provide cellular radio telecommunications services in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by Mountaineer Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Mountaineer Cellular should be granted a Certificate of Public Convenience and Necessity to construct and operate the Sandgap cell site in RSA No. 10 under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. Mountaineer Cellular is granted a Certificate of Public Convenience and Necessity to construct and operate the Sandgap cell site.
2. Mountaineer Cellular shall file a copy of the final decisions regarding the pending FAA and KAZC applications for this cell site construction within 10 days of receiving these decisions.
3. Mountaineer Cellular shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 18<sup>th</sup> day of May, 1999.

ATTEST:

By the Commission

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Executive Director